

### **REMARKS**

Favorable consideration and allowance of the application are respectfully requested. Claims 1-10 were in this application, claim 1 has been amended, and claims 6-10 have been withdrawn in response to the restriction requirement.

Claim 1 has been amended to clarify the location of the application of glue to the plastic film, in accordance with the specification, p. 6, l. 21-30 and p. 7, l. 1-5.

Claims 1-5 were rejected under 35 USC 102(b) as being anticipated by Ballestrazzi, EP 526944 A1 ("EP '944").

To have anticipation, each and every element of the claim must be found in a single prior art reference W.L. Gore & Assoc. V. Garlock, Inc. 721 F.2d. 1540 (Fed. Cir. 1983). “Lack of novelty (often called ‘anticipation’) requires that the same invention, including each element and limitation of the claims, was known or used by others before it was invented by the patentee” Hoover Group, Inc. v. Custom Metalcraft, Inc., 66 F.3d 299, 302, 36 U.S.P.Q.2D (BNA) 1101, 1103 (Fed. Cir. 1995) (emphasis added)

Anticipation requires the reference to describe all the elements of the claims, arranged as in the patented device. Shearing v. Iolab Corp., 975 F.2d 1541, 1544-45, 24 U.S.P.Q.2D (BNA) 1133, 1136 (Fed. Cir. 1992); Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 U.S.P.Q.2D (BNA) 1913, 1920 (Fed. Cir. 1989); Perkin-Elmer Corp. v. Computervision Corp., 732 F.2d 888, 894, 221 U.S.P.Q. (BNA) 669, 673 (Fed. Cir. 1984); C.R. Bard, Inc. v. M3 Sys., Inc., 157 F.3d 1340, 1349 (Fed. Cir., 1998).

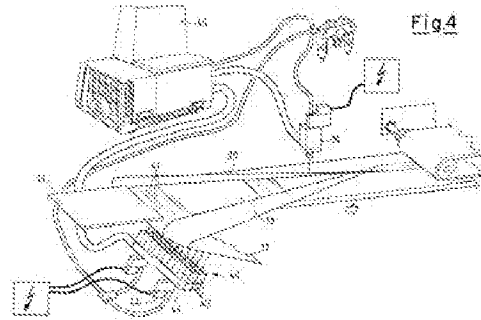
Anticipation requires strict identity, without guessing what the reference discloses. Dayco Products, Inc. V. Total Containment Inc., 329 F.3d 1358 (Fed. Cir. 2003). A claim cannot be “anticipated” by prior art that does not have all of the limitations in the claim. Helifix Ltd. v. Blok-Lok, Ltd., 208 F.3d 1339, 1346 (Fed. Cir. 2000); SmithKline Beecham Corp. v. Apotex Corp., 439 F.3d 1312, 1324 (Fed. Cir. 2006).

Each and every element of amended claim 1 is not found in EP '944, particularly in accordance with the method of amended claim 1.

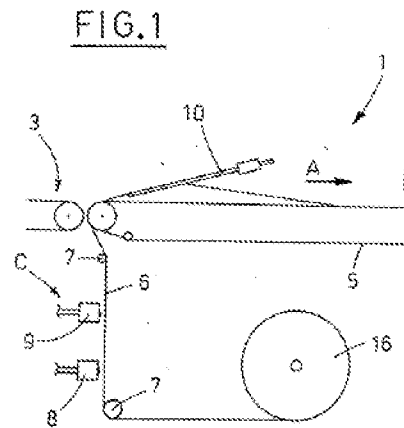
EP '944 relates to an apparatus for sealing an article inside a package made from a paper material instead of a plastic material (“...a particular problem arises in forming the finished package, as no apparatus has yet been conceived which is able to seal the product to be packaged within a continuous paper material ...the object of the present invention is to provide an apparatus able to suitable seal the paper around the product.”).

Paper is handled much differently than plastic due to the different physical properties. For example, plastic may be stretched where paper would be torn. To use a sheet of paper material, Ballestrazzi specifically applies a strip of glue along a longitudinal edge of the paper material only when the paper material is located on the conveyor and during the folding of the longitudinal edges.

See in particular the description, at page 3, column 3 lines 19-25: “a second dispensing element (indicated by 34, in example of a gun type) could also be provided at said front end of the first conveyor (16) to deposit the adhesive material longitudinally along the surface of at least one of said longitudinal edges (20) of the paper web (17) which is to be turned over the other edge in forming the finished package” and figure 4 (Shown above).



In the method of the present invention, the band (6) of plastic material, before being fed onto the conveying means (5), is first fed along a vertical path, upstream of an inlet area of the conveying means (5). The glue is applied along at least one longitudinal edge of the band and crosswise the band exclusively during the feeding of the band along the vertical path, before the band is fed onto the conveying means.



See in particular figures 1 and 4 of the present application, as well as the description at page 6, lines 21-30, and at page 7 lines 1-5:

“Upstream the area, where the articles (2) to be packaged enter the conveying belt (5), the band of plastic film (6) passes through a station (C) in which an appropriate

glue, suitably heated, is applied. The station (C) is located in region corresponding to a vertical path of the band (6) extending between suitable deflecting rollers (7). In the station (C), there are first glue applying means (8), for applying a strip of glue (18) along a longitudinal edge of the band, and second glue applying means (9) for applying a series of zones of glue, spaced apart, crosswise the band”.

As seen in Fig. 1, the band of plastic film is fed along a vertical path and stretched between deflecting rollers (7). This can be accomplished with a plastic film because of its flexibility and pliability. The applicant has found that the ability to successfully applying glue onto the feeding band of a plastic material strongly depends on keeping the band in a very stable configuration, which is accomplished when feeding the band the plastic material along a vertical path between the deflecting rollers as the band moves towards the conveying means. After the band reaches the conveyor, it is less stable, and particularly during folding, glue cannot be practically applied.

EP'944 explicitly applies glue along the longitudinal edge of the paper band during the folding phase of the longitudinal edges themselves, that is, after the paper band has been fed onto the conveyor, and therefore amended claim 1 is not anticipated.

The apparatus of Ballestrazzi is not believed to be usable with a plastic film material such as cellophane, because glue cannot be applied to the plastic film while folding the longitudinal edge of the plastic film around the article to be packaged, as it will not be sufficiently stable because it is too thin, pliable and flexible.

Thus, one skilled in the art would not find the invention in EP '944, nor even a teaching or suggestion in Ballestrazzi of the method of the applicants' invention, which

uses a plastic film to form a package, sealing the package using glue instead of welding.

Based on the above amendment and remarks, reconsideration and removal of the grounds for rejection are respectfully requested. However should the examiner believe that direct contact with the applicant's attorney would advance the prosecution of the application, the examiner is invited to telephone the undersigned at the number given below.

Respectfully submitted,

/WJS/

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